

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

LABOR SERVICES COMPANY/DIVISION OF  
PHYSICAL DISTRIBUTION SERVICES, INC.<sup>1</sup>

Employer

and

TEAMSTERS LOCAL 120, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

Case 18-RC-16667

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Employer, Labor Services Company/Division of Physical Distribution Services, Inc., is a Minnesota corporation engaged in providing leased drivers to its customers. During the past year, a representative period, the Employer received gross revenues in excess of \$1 million. During that

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks a unit limited to all full-time and part-time drivers and yard employees employed by the Employer at its Green Bay Packaging location, excluding managers and supervisors as defined in the Act, as amended. The Employer contends that the unit sought by Petitioner is inappropriate, and that the only appropriate bargaining unit would be all full-time and part-time drivers and yard employees employed by the Employer within the seven-county area of Minneapolis/St. Paul, Minnesota.

The Employer is engaged in the business of providing trucking services to other businesses. It has a total of 60 to 70 employees in the Minneapolis/St. Paul area. These employees work at 8 to 12 accounts, which are customers in need of trucking services. All of the Employer's drivers and yard employees are qualified to drive trucks. Generally, yard employees drive trucks within the confines of a customer's location. Ninety to 95 percent of the Employer's drivers engage in "short haul" deliveries, which means that they are not on the road overnight. All drivers (including yard employees) must have commercial drivers licenses, with air brakes and tractor-trailer endorsements.

Since November 8, 1999, one of the Employer's customers has been Green Bay Packaging. Green Bay Packaging (herein GBP) is located in Coon Rapids, Minnesota,

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same period, the Employer purchased and received at its Minnesota location goods valued in excess of \$50,000 from suppliers located outside the State of Minnesota.

a suburb of Minneapolis. GBP manufactures corrugated (cardboard) boxes of various sizes. The Employer's drivers employed at the GBP facility deliver the completed boxes to GBP customers. The Employer employs a "core group" of seven drivers at GBP, and three extra drivers. Each day the "core group" of seven drivers report to the GBP location, work out of the GBP location, and leave work from the GBP location. The same seven drivers are utilized every day. It also appears that the same three extra drivers are assigned to the GBP account, although they do not work at GBP each day. Rather, the extra drivers work as needed, and, if for some reason one of the "core group" drivers leaves the Employer's employ or moves to a different account, one of the three extras would be moved up to the core group. The "core group" drivers work full time at GBP, and are considered permanently assigned to GBP. Each GBP driver is supplied a tractor by the Employer or its affiliated businesses. The trailer is loaded by GBP employees. The Employer's drivers pick up bills of lading from GBP personnel, and the bills of lading inform the drivers where to drop off loads. The Employer's current contract with GBP is effective for three years.

All drivers and yard employees of the Employer, whether employed by GBP or at one of the Employer's other accounts, are hired by the Employer's human resources personnel or vice president of sales and operations, who are located at the Employer's Bloomington, Minnesota location. All applicants utilize the same applications, are reviewed utilizing the same criteria, are subject to the same Department of Transportation (DOT) regulations, and are subjected to the same background checks. Driver performance is reviewed by the Employer every 12 months. All drivers and yard employees receive the same benefits; are subject to the same drug, alcohol and personnel policies; fill out the same time sheets; and are required to complete the same

vehicle inspection and post-accident reports. The starting wage for GBP drivers is \$15 per hour. The starting wages at other accounts vary—some are higher and some are lower than \$15 per hour. Paychecks are issued by the Employer and mailed to employees. While the Employer relies on customers to report problems with driver performance, the Employer conducts any investigations and decides whether a driver should be disciplined or terminated. A customer can request that a driver be removed from its account, and it appears that the Employer honors such a request. However, the driver may then be reassigned to a different account, and will not necessarily be terminated.

All drivers and yard employees employed by the Employer have similar skills and functions. They are to report to the account to which they are assigned; they are to operate the equipment in a safe, courteous and efficient manner; they are to provide the services the customer needs; and they are to comply with DOT regulations and vehicle checks. The only difference is that for some accounts, drivers may be required to “tarp” and “chain” loads, which requires more physical labor. Other groups of drivers are permanently assigned to other accounts. Those drivers assigned to the “extra board” (which might be as many as 15 drivers and as few as no drivers) go where needed.

There appears to be no day-to-day supervision of the Employer’s employees at the GBP facility. No GBP employee is responsible for supervision of the Employer’s employees. While denied by one of Petitioner’s witnesses, the Employer’s vice president of sales and operations testified that he visits the GBP facility (as well as other Employer work sites) at least twice a week to meet employees and discuss problems or concerns. For example, the witness who denied that Ryan regularly visits the GBP facility acknowledged that Ryan did tell him to “back off” on red-tagging trailers. The

Employer's GBP drivers have been told to contact the Employer's dispatch office to notify the Employer of unexpected absences. However, at least one GBP driver testified that he telephones GBP directly because when he did call the Employer, it could never find a replacement driver. It does not appear that the Employer holds regularly scheduled meetings with either its employees as a whole or with the GBP employees as a group. There was one meeting held by Ryan with GBP drivers to discuss driver overuse of Employer-provided telephones, as well as an introductory meeting to discuss work start times, Employer expectations, what to do in the event of problems with equipment, DOT regulations, and whom to call in the event of absence due to illness. Problems with equipment are not to be reported to GBP, but instead to the Employer.

There appears to be little interaction between GBP drivers who are part of the "core group" and other Employer drivers. At least three GBP "core group" drivers were employed by the Employer at other accounts before being assigned to GBP. One driver, who thought she was a core group driver, was told to not report to GBP one day at the start of her employment, but was offered work at a different account. It appears, however, that at the time the driver was not considered part of the core group. Another employee recently removed from the GBP account was offered work at a different account, but declined the offer.

Based on the foregoing, I conclude that the Employer has presented sufficient evidence to rebut the single-facility presumption. Therefore, the appropriate unit for collective bargaining is a unit of drivers and yard workers employed by the Employer in the seven-county metropolitan area. Undisputed facts show that all drivers are commonly supervised by the Employer's human resources personnel and vice president

of sales and operations, and that the Employer has no supervisor at the GBP site. It is also undisputed that there is a high degree of centralized control over labor relations. Moreover, regardless of location, all of the Employer's employees share common pay and benefits, common skills and functions, and are subject to the same work rules. While the record fails to disclose regular interchange between various of the Employer's core groups of drivers, on the other hand, there is evidence that extra drivers move among core groups and that the Employer transfers drivers from one core group to another core group as necessary. Therefore, an election limited to the Employer's drivers and yard workers at GBP is not appropriate. Novato Disposal Systems, Inc., 328 NLRB No. 118 (1999); R & D Trucking, Inc., 327 NLRB No. 103 (1999).

6. The following employees of the Employer constitute a unit appropriate<sup>3</sup> for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and yard employees employed by the Employer within the seven-county metropolitan area of Minneapolis/St. Paul, Minnesota; excluding office clerical employees, guards, supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

#### **DIRECTION OF ELECTION**<sup>4</sup>

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<sup>3</sup> Although the unit found appropriate herein is broader in scope than that sought by Petitioner, I shall not dismiss the petition inasmuch as Petitioner has not disclaimed interest in the broader unit. In these circumstances, in accord with established Board policy, I shall direct an election in the appropriate unit conditioned upon the demonstration by Petitioner within fourteen (14) days from the issuance hereof that it has made an adequate showing of interest in the broader unit. In the event Petitioner does not wish to participate in the election in the unit found appropriate herein, I shall permit it to withdraw without prejudice upon notice to the Regional Director for Region 18 within fourteen (14) days from the date of issuance of this Decision or, if applicable, from the date the Board denies any request for review of the unit-scope findings in this Decision. Independent Linen Service Company of Mississippi, 122 NLRB 1002, 1005 (1959).

<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate in the manner set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>5</sup>

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Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 13, 2000**.

<sup>5</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that **two** copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, these lists must be received in the Minneapolis Regional Office, Suite 790 Towle Building, 330 Second Avenue South, Minneapolis, MN 55401, on or before **July 6, 2000**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Teamsters Local 120, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

Signed at Minneapolis, Minnesota, this 29th day of June, 2000.

/s/ Marlin O. Osthus

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Marlin O. Osthus, Acting Regional Director  
Eighteenth Region  
National Labor Relations Board

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